IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14/09/2004

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE K.P. SIVASUBRAMANIAM

H.C.P.NO.484 OF 2004

Suman,
S/o. Veeramani Devar .. Petitioner

-Vs-

1. The State of Tamilnadu,
Represented by its Secretary,
Department of Prohibition and Excise,
Fort St George, Chennai 9.

2. The District Magistrate and
District Collector,
Cuddalore District,
Cuddalore. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.R. Sankarasubbu

For Respondents : Mr. Abudukumar Rajarathinam
Govt. Advocate (Crl.Side)

:O R D E R

(Order of the Court was made by P.K. MISRA, J.)

This Habeas Corpus petition has been filed by the detenu himself, who has been detained under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1982 (Tamil Nadu Act 1 4 of 1982), hereinafter referred to as the Act, by order dated 18.2 .2004, passed by Respondent No.2.

2. The grounds of detention is based on the incident dated 24.1.2004 and the two adverse cases noticed by the detaining authority had occurred on 11.9.2001 and 29.3.2003. In the first adverse case dated 11 .9.2001, the

allegation is that the detenu and his 5 associates formed an unlawful assembly with a common object of damaging a bus and in furtherance of their common object, they damaged the front and rear wind screen glasses,side glasses, head light with casuarina sticks and thereby caused damages to the tune of Rs.20,950/- and they also assaulted the witness and caused injuries. On the basis of the aforesaid allegation, a case has been registered in Manalmedu P.S Cr.No.453/2001 under Sections, 147, 323 IPC and 3(1) of the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992. In the second adverse case dated 29.3.2003, the allegation is that the detenu and his 3 associates attacked one Dhanasekaran with veecharuval due to previous enmity and caused the death in pursuance of their common intention. A case has been registered in Cr.No.178/2003 under Sections 449, 302 r/w.34 IPC. In the ground case dated 24.1.2004, it is alleged that the detenu and his 3 associates criminally intimidated the public and vendors demanding mamool by threatening that they were already involved in the cases like murder and robbery and that in order to conduct such cases and other expenses they should part with money and they subsequently threatened the persons with weapons like vicharuval and country made bombs. It is further alleged that Then one of his associate Thiru. Subash forcibly robbed Rs.150/- from the pocket of the complainant and another associate Thiru. Padaleeswaran forcibly robbed Rs.200/- from Thiru. Chandrasekaran. All the accused persons also chased the witnesses and threatened them. A case has been registered under Sections 392, 507(ii) r/w. 397 IPC and 27(1) Arms Act of 1959, 9(b)(1) Explosives Act, 1884 and 4(1), 5 of Explosive Substances Act, 1 908. Incidentally it may be pointed out that three associates of the present petitioner were also detained under preventive detention by separate orders passed by the very same Collector on the very same day and out of the other three, as per the advice of the Advisory Board, the detenues Javankumar and Padaleeswaran have been released.

3. In the aforesaid background, learned counsel for the petitioner has contended as follows :-

(1) As per the provisions contained in Section 3(2) of the Act, the District Magistrate and the Collector of Cuddalore District is only authorised to pass orders of preventive detention in respect of the incidents which occur within such district and in the present case, the first two incidents relied upon by the Collector had occurred in a different district, and therefore, the Collector did not have the territorial jurisdiction to pass the order of preventive detention.
(2) The incidents relied upon by the District Collector are solitary incidents and that too after a long gap and the detenu could not have been considered as a Goonda as defined under the Act, and therefore, the order of detention is vitiated by non-application of mind.
(3) Three other accused persons involved in the ground were also detained under preventive detention by the very same Collector by separate orders passed on the very same day, and as per the advice of the Board, two of the persons had been released, and since the allegation against those two other persons were either equally serious or more serious and those other persons past record was even worse as that of the present detenu and yet they were released, the State Government should have considered those aspects at the time of confirmation of the detention order and without application of

mind, the State Government has mechanically confirmed the order.

4. Learned counsel appearing for the State has supported the order of detention and contended that the contentions raised by the petitioner are not tenable.

5. In connection with the first contention, the learned counsel for the petitioner has submitted that under section 3(1) power is conferred on the State Government to pass the order of preventive detention and relied upon Section 3(2) of the Act, which is being relevant, is extracted hereunder :-

"3(2) If, having regard to the circumstances prevailing, or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the State Government are satisfied that it is necessary so to do, they may, by order in writing, direct that during such period as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-section (1), exercise the powers conferred by the said sub-section."

6. Learned counsel by relying upon Section 3(2) has further submitted that under Section 3(2), such power can also be conferred on a District Magistrate or a Commissioner of Police relating to any area within the local limits of the jurisdiction of the District Magistrate or the Commissioner of Police, and therefore, the District Magistrate or the Commissioner of Police authorised under Section 3(2) cannot pass any order of preventive detention relating to a person, who had committed the crimes relied upon by such authority beyond the territorial jurisdiction of such authority.

7. On a careful consideration of the aforesaid submission, we do not think that the contention raised by the learned counsel for the petitioner can be accepted. While we accept the contention that there should be "territorial nexus" in the matter relating to preventive detention passed by the District Magistrate or the Commissioner of Police of a particular district or area concerned, it cannot be said "all the incidents" on the basis of which the order is passed must have occurred within the territorial jurisdiction of the concerned detaining authority. Of course, it cannot be denied that there should be some territorial nexus, but such nexus cannot be confined to the narrow limits suggested by the learned counsel for the petitioner.
To illustrate the point, supposing the detenu is a resident of a different district and has committed all the alleged crimes in the districts other than the one under the territorial jurisdiction of the concerned authority, obviously, the Collector of such district is not authorised to pass an order of preventive detention, because none of the cause of action arose within the jurisdiction of such Collector. On the other hand, however, if such a person, who is a resident of some other district and has committed crimes in other districts, comes within the territorial jurisdiction of a particular jurisdiction of a district Collector, such Collector, if he is

satisfied on the basis of the incidents in respect of other districts, can pass an order of preventive detention. Similarly, if the ground case has occurred within the jurisdiction of a particular district, as in this case, even though adverse incidents had occurred beyond the jurisdiction, the Collector is not powerless to pass an order of preventive detention. What is required is that there should be some reasonable nexus with the territorial jurisdiction of the concerned authority and depending upon the facts and circumstances of a particular case, the order of preventive detention can be passed.

8. It is to be noticed that as per Section 3(1), an order of preventive detention can be passed "with a view to prevent him from acting in any manner prejudicial to the maintenance of public order". It is obvious that so far as the State is concerned, such order is with a view to prevent such a person from acting in any manner without prejudicial to the maintenance of public order within the entire State, whereas if such power is exercised under Section 3(2) by the District Collector or the Commissioner of Police, such order must be with a view to prevent the person from acting in any manner without prejudicial to the maintenance of public order within the territory of such Collector or the Commissioner. Therefore, to this incident, there should be some nexus. Such nexus can arise if the person has committed crime/crimes within the area concerned or if such person has committed crimes outside the area, but has come within the concerned area, because even in such a case, there may be apprehension that such person can act in any manner prejudicial to the maintenance of public order in the concerned district. Judged against the aforesaid principle, we are unable to accept the contention raised by the petitioner.

9. To appreciate the second contention raised by the petitioner, it is necessary to notice some of the relevant provisions.
As per Section 2(f) "goonda" means a person, who either by himself or as a member of or leader of a gang, habitually commits, or attempts to commit or abets the commission of offences, punishable under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code, 186 0 (Central Act XIV of 1860).
As per Section 3(1) read with 3(2), the order of preventive detention can be passed by the District Magistrate in respect of "Goonda" with a view to prevent him from acting in any manner prejudicial to the maintenance of public order. The expression "habitually commits" has not been defined in the Act.

10. In 1995 SCC (Cri) 454 (MUSTAKMIYA JABBARMIYA SHAIKH v. M.M. MEHTA, COMMISSIONER OF POLICE AND OTHERS), while construing similar provision under the Gujarat Prevention of Anti-Social Activities Act, the Supreme Court has considered the meaning of such expression and has observed as follows:-

" 8. The Act has defined "dangerous person" in clause (c) of Section 2 to mean a person who either by himself or as a member or leader of a gang habitually commits or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Penal Code or any of the offences punishable under Chapter V of the Arms Act. The expression

□habit□ or □habitual□ has however,not been defined under the Act. According to The Law Lexicon by P. Ramanatha Aiyar, Reprint Edn. (1987), p.499, □habitually□ means constant, customary and addicted to specified habit and the term habitual criminal may be applied to anyone who has been previously convicted of a crime to the sentences and committed to prison more than twice. The word □habitually□ means □usually□ and □generally□. Almost similar meaning is assigned to the words □habit□ in Aiyar□s Judicial Dictionary, 10th Edn., p.485. It does not refer to the frequency of the occasions but to the invariability of practice and the habit has to be proved by totality of facts. It, therefore, follows that the complicity of a person in an isolated offence is neither evidence nor a material of any help to conclude that a particular person is a □dangerous person□ unless there is material suggesting his complicity in such cases which lead to a reasonable conclusion that the person is a habitual criminal. In Gopalanachari V. State of Kerala (1981 SCC (Cri)546) this Court had an occasion to deal with expressions like □bad habit□ , □habitual□, □desperate□, □dangerous□, and □hazardous□. This Court observed that the word habit implies frequent and usual practice. Again in Vijay Narain Singh v. State of Bihar (1984 SCC (Cri) 361) this Court construed the expression □habitually□ to mean repeatedly or persistently and observed that it implies a thread of continuity stringing together similar repetitive acts but not isolated, individual and dissimilar acts and that repeated, persistent and similar acts are necessary to justify an inference of habit. It, therefore, necessarily follows that in order to bring a person within the expression □ dangerous person□ as defined in clause(c) of Section 2 of the Act, there should be positive material to indicate that such person is habitually committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or Chapter XVII of IPC or under Chapter V of the Arms Act and that a single or isolated act falling under Chapter XVI or Chapter XVII of IPC or Chapter V of Arms Act cannot be characterised as a habitual act referred to in Section 2(c) of the Act.□

In the aforesaid decision, it was further observed :
□ 10. . . . From the narration of facts in the said complaint it is abundantly clear that the criminal activity was directed against an individual and from the nature of the incident it is difficult to assume that it gave rise to public order disturbing the tranquillity of the locality. At the most it was a criminal act directed only against an individual which has nothing to do with the question of public order. It appears that it was on account of the earlier day incident that the petitioner made a plan along with his associates to teach a lesson to the complainant by assaulting him when he was seen in Hair Cutting Saloon on 24-4-1993. This apart the incident had occurred on 24-4-1993 while the detention order was passed on 19-8-1994 after the lapse of more than 16 months. This long lapse of time between the alleged prejudicial activity and the detention order loses its significance because the said prejudicial conduct was not approximate in point of time and had no rational connection with the conclusion that the detention was necessary for maintenance of public order. Such a stale incident cannot be construed as justifiable ground for passing an order of detention.□

The aforesaid decision of the Supreme Court has taken note of the earlier decisions in respect of similar provisions and it is not necessary to

refer to those earlier decisions specifically.

11. From the aforesaid decision, it is apparent that the complicity of a person in an isolated offence is neither evidence nor a material of any help to conclude that a particular person is a dangerous person in our case, a Goonda. Moreover, it must be established that there is thread of continuity stringing together similar repetitive acts but not isolated, individual and dissimilar acts and repeated, persistent and similar acts are necessary to justify an inference of habit.

12. As per the specific definition contained in Section 2(f), habitual commission of offences must e in respect of the offences punishable in Chapter XVI, Chapter XVII or Chapter XXII of the Indian Penal Code. In other words, habitual commission of offences coming under other Chapters would not make the person goonda within the meaning of Section 2(f), even though such a person can be described as a habitual criminal. Even if a person habitually commits crime, such a person cannot be considered as goonda within the meaning of Section 2(f), unless, the habitual commission of offences included in the Chapter XVI, Chapter XVII or Chapter XXII of the Indian Penal Code. Moreover, there should be thread of continuity stringing together similar repetitive acts but not isolated, individual and dissimilar acts. Judged against the aforesaid light, it is apparent that the order of detention has been passed without application of mind to the requirement envisaged under the Act.

13. In the grounds of detention, after narrating two adverse cases and the ground case, the detaining authority has concluded in paragraph 4 that Hence I am satisfied that Thiru. Suman is habitually committing crimes and is also acting in a manner prejudicial to the maintenance of public order and as such he is a Goonda as contemplated under sec.2(f) of the Tamil Nadu Act 14/1982.

14. Out of the incidents already narrated, the first incident had allegedly occurred on 11.9.2001, about 2= years prior to the order of preventive detention. Applying the standard laid down in the Supreme Court decision already cited, such incident was obviously a stale incident. Moreover, gravamen of the allegation in the said incident was that the detenu and his 5 associates had formed an unlawful assembly with the common object of damaging a bus and in furtherance of their common intention, they had damaged the bus. On the basis of the said allegation, a case was registered under Section 3(1) of the Tamil Nadu Property (Prevention of Damage and Loss) Act. Thus, the primary allegation was not the commission of an offence under Chapter XVI, XVII and XXII of IPC. It is of course true that a case was also registered under Section 323 IPC, but as narrated by the detaining authority himself, the main allegation was relating to commission of offence under the Tamil Nadu Property (Prevention of Damage and Loss) Act. Not only the incident was very stale, but also possibly the incident would not come within the definition as envisaged.

15. In respect of the second incident, even though an offence under Section 302 IPC had been allegedly committed, from the narration of the

events in the grounds of detention as well as the materials contained in the booklet furnished to the detenu, it is apparent that such action took place as the present detenu and his father and others wanted to seek revenge against a person who had murdered the grandfather of the present detenu. The obvious motive was, therefore, seeking of private revenge against a particular individual and it had got no nexus with the question of maintenance of public order. Commission of such offence can be said to be an isolated act and not commission of a similar act as compared to the ground incident, namely, the commission of offence under Sections 392 and 398 IPC with the Explosives Act and the Explosive Substances Act in a public place. Keeping in view the dictum of the Supreme Court in the aforesaid case, we are of the opinion that on the basis of unrelated incidents which had occurred in 2001 and 2003, there was no material to come to a conclusion that the detenu was a goonda within the meaning of Section 2(f) as per the ground incident dated 24.1.2004. On the basis of the aforesaid conclusion, the detenu is entitled to be released.

16. The last contention raised by the counsel for the petitioner also merits acceptance in the peculiar facts and circumstances of the present case. As already noticed, in the present case, four persons were involved in the ground incident. Out of four persons, two persons, namely Javankumar and Padaleeswaran have been released by the State Government on the basis of the opinion furnished by the Advisory Board. The contention of the learned counsel is to the effect that in respect of those detenues, who were detained on the basis of the very same ground incident, the allegation relating to past history were equal or even more serious and the fact that those persons had been released was a relevant circumstance which should have been considered by the State Government at the time of confirmation of the order of detention.

17. From the materials on record produced before us, it is apparent that at least so far as Padaleeswaran is concerned, the allegations against him in the ground case as well as the adverse cases relating to him were much more serious than that of the present detenu. It is of course true that we are not sitting to review the advice rendered by the Advisory Board. However, the mere fact that the Advisory Board had advised for release of those two persons and particularly, Padaleeswaran was a relevant circumstance to be considered by the State Government at the time of confirmation of the order in respect of the present detenu as the ground case relating to the present detenu and the aforesaid Padaleeswaran were the same.

18. Learned counsel appearing for the respondents has submitted that as per the provisions contained in Section 12(2) of the Act, in view of the opinion of the Advisory Board that there was no sufficient cause for the detention of the person concerned, namely Padaleeswaran, the State Government was bound to revoke such detention and the fact that such other person was released by the State Government, being bound by the opinion of the Advisory Board, is not a relevant circumstance.

19. In 1983 SCC (Cri) 509 (MOHD. SHAKEEL WAHID AHMED v. STATE OF MAHARASHTRA AND OTHERS), relied upon by the learned counsel for the petitioner, the fact that the order of preventive detention of a person on the

basis of selfsame incident had been revoked on the basis of the report of the Advisory Board was not brought to the notice of the detaining authority, was considered to have vitiated the order of preventive detention. The only difference in the said case and the present case is that in the said case, the opinion and the consequent order of release were not brought to the notice of the detaining authority, whereas in the present case, such opinion and the consequent release of the detenues, who had been detained on the basis of the very same ground case, was not brought to the notice of the State Government while it was considering the question of confirmation of the order of detention. In our opinion, this itself in the facts situation does not make a difference in the matter.

20. As per Section 12(1), even if the Advisory Board gives a opinion that there is sufficient cause for detention of a person, the State Government is not bound to confirm the order of detention, but the State Government □may confirm the detention order□. In other words, even though as per Section 12(2) the opinion of the Advisory Board that there is no sufficient cause for the detention is binding and the State Government is bound to revoke the detention in such case, the opinion of the Advisory Board that there is sufficient cause for detention is not binding on the State Government and inspite of such opinion regarding sufficiency for the cause of the detention, the State Government may revoke such detention. It is obvious that while considering the question of confirmation of the order of detention under Section 12(1), the State Government is required to apply its mind to all relevant circumstances. The fact that the Advisory Board had given a particular opinion for releasing a □co-detenu□, who had been detained on the very same ground case, is obviously a relevant circumstance to be considered by the State Government and the ratio of the decision of the Supreme Court is equally applicable.

21. Learned counsel for the respondents by relying upon the decision of the Supreme Court in 2000(2) L.W Crl.1300 (RAJAPPA NEELAKANTAN v. STATE OF TAMIL NADU AND OTHERS) has submitted that the release of another detenu of similar allegation is not a relevant factor.

22. On carefully going through the aforesaid decision, we feel that the said decision in which there is no reference made to earlier decision of the Supreme Court is applicable to the facts and circumstances of the present case. In the latter decision of the Supreme Court, there were two separate orders of preventive detention on two different dates under COFEPOSA in respect of two separate individuals and the only connecting link is both the individuals were travelling in the same car on the date of incident, but there was no allegation that both of them had committed the offence jointly. In those circumstances, the Supreme Court observed that the release of other person was not a relevant circumstance for the consideration of the detaining authority. In our opinion, the facts of the present case are rather similar to the earlier decision of the Supreme Court.

23. Learned counsel for the State has also submitted that if such submission is accepted, the State Government would be required to

consider and apply opinion of the Advisory Board in respect of all the detenues involved in different cases. We do not think that the State Government is required to consider the factum of release of all the detenues detained in different cases. Where, however, the ground case is the same in respect of several detenues, how the case of a codetenue is considered subsequently by the Advisory Board or even the Court, is a relevant circumstance, which the State Government is required to consider at the subsequent stage of confirmation. This is not to suggest that in every case where the Advisory Board opines regarding the release of a co-detenue detained on the basis of the same ground case, all the co-detenues are to be released irrespective of other circumstances. We are stressing upon the fact that such a release is a relevant factor, which should be considered by the State Government and non-consideration of such relevant factor would vitiate the order of confirmation.

24. In the result, the HCP is allowed and the detenu is set at liberty forthwith unless he is required in any other connected case.

Index : Yes
Internet: Yes

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To

1. The State of Tamilnadu,
Represented by its Secretary,
Department of Prohibition and Excise,
Fort St George, Chennai 9.

2. The District Magistrate and
District Collector,
Cuddalore District, Cuddalore.

3. The Superintendent of Police,
Cuddalore District, Cuddalore.

4. The Public Prosecutor,
High Court, Madras.

5. The Superintendent,
Central Prison, Cuddalore.